

# The Juries Right,

Asserted and vindicated by the Ancient  
and good Law of England.

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When is clearly discovered the necessity, benefit,  
and safety of Juries, in opposition to those corruptions,  
and many evils that are incident, and do attend Judges  
(as they are cal'd) both in Civill and Common Courts.

Occasioned by the late unjust, cruell, and illegall Triall  
of Mr *Tho. Webbe*, at the Sessions held for *London* and *Middle-*  
*sex* in the Old Bayly.

By *Abraham Lammond*, ear-witnesse of the said Triall,  
a hearty Well-wisher of the common good.

Deut. 17. 6.

At the mouth of two Witnesses, or three witnesses, shall he that  
is worthy of death be put to death; but at the mouth of one  
witness he shall not be put to death.

Chap. 9. 15.

One witness shall not rise up against a man for any iniquity,  
or for any sinne wherein he sinneth; but at the mouth of two  
witnesses, or at the mouth of three witnesses shall the matter  
be stablished.

LONDON, Printed for H. J. 1654.

# Twelve Rights

A Declaration of the Rights of the Colonies in North America

That the United Colonies by these presents do declare and do hereby certify to the world that the Colonies have united themselves together in the most solemn manner and have agreed to the following Declaration of the Rights of the Colonies in North America

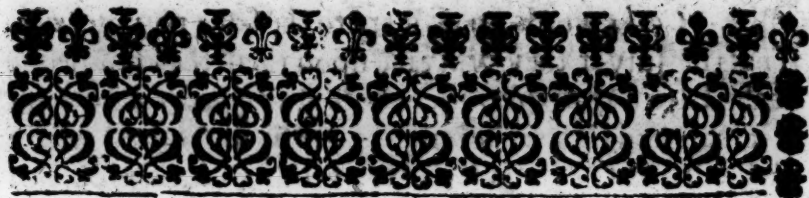
That the Colonies have agreed to the following Declaration of the Rights of the Colonies in North America

By Authority of the Colonies, and with the assent of the Colonies

I, the undersigned, do hereby certify to the world that the Colonies have united themselves together in the most solemn manner and have agreed to the following Declaration of the Rights of the Colonies in North America

That the Colonies have agreed to the following Declaration of the Rights of the Colonies in North America

LONDON, Printed by W. J. 1776



## The Furies Right,

&c.

Gentlemen :



Seriously considering of the great weight of your imployment and the great trust reposed in you, by the Constitution of our good ancient Lawes, placing the Issues of life and death of the Prisoners (whose cases come within your cognizance) in your honest and judicious consideration. The Law of this Land constituting you Judges both of Law and fact; and indeed making you the chiefe Judges in the Court, all others but inferior to you, as appears by the Lord *Cookes* Comentaries on Littleton, viz. In this case the Recognitors of the Assize may say & render to the Justices their verdict at large upon the whole matter: and in another place he saith, viz. for as well as the Jurors may have Cognizance of the Lease, they also may as well have Cognizance of the Condition: And further, *Cook* there saith, Here its to be observed that a speciall verdict, or at large may be given in any action, and upon any issue, be the issue generall or speciall: and in Section 368. *Littleton* hath these words, also in such case where the inquest may give their verdict at large, if they will take upon them the knowledge of the



Law, upon the matter they may give their verdict generally. *Cooks* words upon it are to the same purpose, *viz.* That the Jury if they will take upon them the knowledge of the Law (as *Lilburn* here saith) may give a generall verdict; and this we see made good in all Courts, where Juries doe not onely judge of the validity of the prooffe of the fact but also of the Law, by assigning what damages they thinke is just, I say these things induced me to offer unto your serious thoughts the following lines, in part disburthening my selfe of those many sad thoughts, which I contracted to my selfe at the last Sessions, held in the Old Bayly for the City of London and Middlesex, at the Triall of one Mr. *Tho. Webbe*, a Gentleman to whom I am altogether a stranger, onely being present in the Court when he was call'd to the Bar, and perceiving a high designe carried on by the Court against him, I was very intensitive in hearing the triall, for the information of my selfe. And having heard it, and strictly examining the severall passages thereof, and then inquiring of an Officer how long the Gentleman had been in custody? I was informed, that hee was committed by Lievetenant Colonel *Barksted*, and Mr *Baldwine* Gent. Porter of the Tower, for coynning, and had been in Newgate 9 weeks. At which I could not but much wonder, that a Gentleman (and indeed any) should be committed to Prison for one fact, and when Sessions comes to be indicted for another, it being a ready way to destroy even the innocentest of men. For when one committed to a Goale, makes preparation against his Triall for what hee was committed; when hee comes to be arraigned hee shall bee arraigned for another thing, unthought of by the Prisoner, and shall bee forced to joyne issue thereon. What a most sad condition is that Prisoner in? And what illegall and cruell dealings are these, putting the Prisoner on the greatest hazard and danger of his life, being so suddenly surprized by an Indictment against which he hath made no provision?

This



This I perceived was the case of Mr. Webb, who had  
 hee not undauntedly withstood the malice carried on a-  
 gainst him, and the Gentlemen of his Jury had not bene  
 men of honest mindes; Gentle would suffice and knowing,  
 the danger was so great by reason of the malice carried a-  
 gainst him, that nothing but life would satisfie, which fully  
 satisfied me of the necessity of Juries, the only equall and  
 best way of deciding and terminating of Causes, whether  
 civil or criminal; they being the Guard of our Estates, Li-  
 berties and Lives. The Court many times are interested  
 by made friends; and indeed the chiefe thereof their pla-  
 ces are their trades: and where there is continuance in any  
 Office, oaths (though never so binding) weare out, and  
 little regarded, (the great grievance and crying sin of this  
 Nation) as is witnessed by daily, we fall, and sad expe-  
 rience.

But now a Jury consisting of 12 honest and indifferent  
 men, whose places are not their trades, who have not  
 yearly allowances for the time, and who only serve being  
 elected, and not perpetuated in their places, I appeal to  
 all ratioll men, whether such a way bee not most equall,  
 most safe and secure? and whether there be that probabi-  
 lity of the Juries being corrupted, made friends, &c. as of  
 the Judges? (as they are called) No. I conceive it's the  
 standing water corrupts and gathers filth, and not the run-  
 ning stream, &c.

And now Gentlemen whose lots it shall fall out to be  
 to serve in the Juries for London and Middlesex, your Of-  
 fice being of such necessity, and beyond which the wisest  
 of men cannot invent and finde out a more equall, safe,  
 and better way.

I shall proceed to give you a true and briefe relation of  
 the Gentlemans Triall before mentioned, wherein you  
 may see the hazards poore prisoners are many times put  
 upon, and how much the Court stops the legall Course  
 of your right, as you are Judges both of law and fact, and  
 sworn

sworn equally between the Common-Weale and Prisoner at the Bar, and be rouzed up like so many English men to claime your right, to lose no part of it; it's not onely the Prisoner at the Bar suffers, but many times endeavours are made to stifle the light of a good conscience in you: therefore Gentlemen know what you are; stand fast in it; let a good conscience alwaies dwell in you; for Divine Providence hath call'd you forth to stand betweene life and death, to judge betweene the nocent and innocent, that the evil may be punished, and the good justified.

Now Gentlemen, I desire you to understand, that the last Sessions held in the Old Bayly began on a Wednesday, the 12. of December last, and ended Saturday following, on which day I being there indeed only to see passages, and to informe my judgement, Mr. *Webbe* aforesaid was call'd to the Bar, who appearing, after holding up the hand, the Indictment for Adultery being read, and guilty or not guilty being asked him, hee desired liberty before he pleaded (as was but right for to be granted him) to speake; but it was very angerly denied him, and hee urging it as his due, the Court caused him to be turned to the other side of the Bar, and there Mr. *Briscoe* threatned to gauge him if he spake, when what I perceived the Gentleman had a desire to speak, was only to have a Copy of his Indictment and a little time given him to provide an answer to it, hee expressing himself there in the Court, that he had no notice of any such indictment, being committed for coynning, & so had not provided any thing for his defence, and the Act against Adultery allowes witnesses to be heard and sworn on the Prisoners behalfe, therefore the Gentleman desired a little time, but it was most illegally and cruelly denied him, and the Gentleman forced to a Triall; so that had he not stoutly withstood their prejudice against him, and a judicious Jury to consider the matter of fact, &c. I desire you to consider what eminent danger his life had been in, being suddenly surpris'd by an unknow indictment, and  
not

not having any time to provide any Witnesses for his defence? Oh, how many innocent persons have thus been cast away! and how many more may, if you Gentlemen stand not in the gap in the claime and use of your owne Right?

And after the Gentleman was put upon these disadvantages, and like a naked man seized on by the prejudice and will of the Court, and forced to plead. After that he had pleaded not guilty, and when it was expected that evidence should bee sworn and heard to the matter of fact mentioned in the Indictment, there stood up a Councell at Law, one Mr. *Hilbey*, in the behalfe of the Protector, against the Prisoner at the Bar, (another strange unheard of disadvantage, especially for a naked and unprovided man, as the Gentleman was) who instead of pleading either to the fact; or matter of Law, fell to railing and abusing Mr. *Webbe* very grossely, and that with matters of opinion of 4 or 5 yeares standing. Mr. *Webbe* desired the Court, that since a Councell was entertained against him, that he might heare the Witnesses sworn, and then if the Councell could inform the Jury, as to matter of fact from the evidence, he might freely speake; but for the Councell to wave the matter in question, and to run back to opinions of foure or five yeares standing, and they such also which are false, hee could not but looke on it as very hard measure: and truly Gentlemen you may consider of it, for the Prisoner was not onely in hazard by that irregular piece of malice, but the judgements of the Jury was endeavored to be frustrated, and to entertain a prejudice against the Prisoner, and therefore the Councell laboured to possess the Jury with dangerous opinions the Prisoner held, and what a dangerous person he was, and therefore, said he, not fit to live: and so would have taken off the Juries consideration of the fact, and have fastened their thoughts on his invectives against the prisoner, which (Gentlemen) if the Jury had so done, or at any time should do (which God forbid any should)

what



What a sad condition may an innocent person bee brought into, their lives taken away, Justies traduced and souled, and our whole Law made invalid, and to become a thing of no worth?

Yet for all this, the Prisoner could not bee heard, but the Court li suffered to proceed in his invectives, and to bespatter his good name and reputation, till at last, whether it was shame, or because the Councell had no more sayling matter against the Prisoner, he ceased, & then about sixteene or seventeene witnesses were sworne; some from Dover, some out of Southwarke, and some in London, but not one of them all swore to the matter of fact. viz. (carnall knowledge;) nay not any of them swore, that ever the Prisoner was seene in bed with the Gentlewoman; onely one M. s. Neale whose evidence was contradicted: for when the Prisoner desired the Court to aske her where it was she could not tell, onely in generall it was in London, but where about or at whose house she could not tell. Besides she is known to be a very idle person, who hath bene a companion with her husband in abundance of evils, & her husband was hanged the Sessions before for an high way man; so that though there was many witnesses and abundance of dirty matters, yet not one to the fact, nor from all could handsomly be deduced and drawne, the least shadow or circumstance to prove the fact.

Now when the witnesses were sworne and had given in their evidence with the help of the Councell, who would have drawne some of the witnesses by tricks and quibbles to evidence what they knew not, the Councell instead of making use of the evidence, to prove the matter of fact, waved that, and falls to his former saylings with abundance of demureness, till premises solemnly that hee had no knowledge of the Prisoner, nor never see him till then at the Barre; yet in the next place backs the evidence with telling the Jury that the Prisoner was no more  
to

to live, for he was a man of erronious and dangerous principalls, and so vented his foule mouth against the Prisoner, who all that while with abundance of patience heard it, not being suffered to speake, till at last the Councell having shot out his venome, the Prisoner did himselfe in a very short, but full, answer to the evidence, applying himselfe very discreetly to the Gentlemen of the Jury, desiring them to consider the matter of fact for which hee stood there arraigned, and for which they were sworne to passe indifferently betweene the Protector and him the Prisoner at the Barre, and the evidence to the fact; withall acquainting them, that though the Gentleman Lawyer was pleased to take a fee to abuse him, and so to make that his chiefe worke, neglecting all things of Law, matter of fact, and indeed common civillity, yet hee hoped better things of them. *viz.* that they would mind their worke, the fact, the evidence to it, and not be seduced by the Councells evill example; in confidence whereof he most chearfully resigned himselfe to their Verdict, desiring the Lord to goe along with them &c. After this the Councell offered to speake and to that end puld out some papers out of his pocket, but what hindred whether they were blankes or stuffed with such malice as hee had sufficiently before vented, I know not, but the paper he put up againe, and onely sayd mum; and so after some debate the Jury brought their verdict, not guilty; onely one remarkable passage happened and that was the Jury: while withdrawne to consider of their verdict sent three times to the Court for to have the Act, but it was denied them, & answer returned, that they were onely to consider of the matter of fact, but if any thing of Law did arise they were to come to the Court, and the Court would resolve them; a most strange kinde of practise that the Jury who are sworn, and who may as is cited in the beginning, take the cognisance of the whole matter both as to fact, and Law, should bee denied the

Law, that the Court shall hedge all in their owne breasts; certainly congruant with this practise would be illiterate men, men that can neither write nor read; a Jury of such men will never trouble the Court with businesse of Law, they will never send to the Court for their Statute and Law books; and its much to bee wondred what the reason was why the Court should deny the Jury the Act; certainly it to bee doubted their ends were not good in the thing.

But so noble and gallant were the Gentlemen of the Jury, that they keepe close to their owne, and would not yield one inch to the unjust detainer of the Court, a good example and president for all Gentlemen who shall bee employed in that honourable service of the Commonweale.

Now Gentlemen, you have had the relation of Mr. *Webbs* tryall, I shall now present you with the ends I proposed to my selfe, in the publication herof, and they were, *viz.*

First, the asserting of that good old principall of our English Lawes; *viz.* that the Jurie are Judges both of Law and fact, it being a principall as good as its ancient; indeed its of that weight as that our weale and woe rests wholly upon it. Judges, as they are cald, may be byassed and corrupted; long continuance in their places may doe it, favour and affections to great men may doe it, as when a businesse comes in competition, with the power ruling, under which they are Iudges; as in the Case of *Iohn Lilburne*, in whose case its manifest how the Law was abused, not suffered to bee read, but now Iuries have none of these cloggs, they are not men perpetuated, nor men interested, but men indifferent and sworne to goe according to evidence, a most sure safe and equall way of doing right to all men, and betweene man and man; so that Gentlemen, your employment is not meane, you are not servants in the Court, your employment is Honourable,



ble, and you are Masters of the Court, and therefore Gentlemen this assertion comes in.

The second place, *viz.* That both Law and fact ought to be plaine and cleare before you, therefore the evidences ought to direct their speech unto you, and both evidences for the Common weale, and on behalfe of the Prisoner, ought to bee free without interruption, and the Prisoner, himselfe to be free to speake without the awe and threats of the Court; for Gentlemen the evidence is to you, and for you to judge of, and if the evidence should bee interrupted, your judgement cannot but bee very imperfect, and the Prisoner many times may have something to say that may give great satisfaction; but if hee bee awed and not suffered to speake, such satisfaction may not be received as may be requisite; therefore Gentlemen, all things of this nature comes within your cognisance, and you ought, its your power and duty to see a free and cleare current for the evidences and Prisoner, that one bee not stretcht forth on the tenters by tricks the Court many times uses, and the poore Prisoner abridged and debarred of his liberty; its your worke, it chiefly concerns you, and therefore none ought to intermeddle with it.

The next thing I have to offer to you, as my end in these, is a great cheat that I then at the aforesaid tryall perceived to bee; put on the Prisoner; *viz.* there being some crimes, as Treason and Adultery, that are to be prosecuted within twelve Months, and that all prosecution out of that time is made null and invallid, and that some mens malice may be answered, who covet as much after blood, as the babe after its mothers brest, so that though they have nothing within the time, yet will they lay their inditement within the time, when their witnesses all sweare to circumstances beyond their time a great while, as was in the forementioned tryall, wherein the inditement included a fact done on the first of *June* last, and not one of the witnesses swore neare the time, but all

swore beyond the twelve Months, a very great abuse, and of dangerous consequences: for suppose a Prisoner be ignorant of the Law in such cases, (as alas how many poore wretches doe perish at the Barre in the Old Bayly, for want of knowledge) what great danger is his life in? how will his life become a sacrifice through his ignorance of the Law, to the malice of bloody minded men? Oh! therefore Gentlemen consider you are sworne, the Law hath made you superiour in the Court, the lives of many lies in your breast, and honesty, and how it behooves you to weigh and examine every perticular, both of inditement and evidence, particulars of the inditement. First, the fact. Secondly the time on which the fact was committed, both being equally materiall and in the evidence. First whether they bee to the fact plaine and cleare. Secondly to the time true and certaine, both which being as necessary as the prooffe of the fact, which most evidently appears in the two titles of treason and adultery.

First, in the case of treason, whether it bee in words, plots against his highnesse or the present government, or the coyning or counterfeiting of money, all being limited within 12 Months for prosecuting, as appears by the words of his highnesse declaration published in *lan.* 19 53. the words are these: Provided alwayes that no person or persons, shall bee indicted or arraigned for any of the offences before mentioned in this ordinance, unlesse such offender or offenders shall bee indicted or prosecuted for the same within one yeare after the offence committed, so that the time must bee punctually sworne to as well as the fact, or else its imperfect; for if it bee without the time that is above twelve Months its invalid, and no person ought or can be arraigned for any act of Treason.

Again, to every fact of Treason, the Law requires two sufficient plain and cleare Witnesses, appears 1 *Ed. 6. chap. 12.* and 6. *Ed. 6. chap. 11.* to all Treasons whether high or petty Treasons, there shall be two clear, legall, and sufficient

sufficient Witnesses. Sir *Edward Coke* in 3. part *Instituti-  
cha.* of High Treason, is of the same opinion. So that if  
there be not two Witnesses, and they plain and cleer (not  
circumstances and inferences) to a reasonable fact, its not  
sufficient in Law for you to ground a Verdict on; and if  
two Witnesses should swear to one and the same fact, yet  
if they differ in time one from another, one swears to  
one time, and the other to another time, it's but one Wit-  
nesse: the Law so deemes it. and (Gentlemen) you are  
Judges of Law as well as of fact. This ought to be con-  
sidered by you.

And then as touching Adultery, the Act of Parliament  
of June 24. 1650 saith, the words are these: Provided  
alwayes that no person or persons shall incur any of the  
penalties in this Act ment ioned, unless the said person or  
persons be therefore indicted within twelve months after  
the offence committed; And evidence must be sworn for  
the prisoner, the words are these: Provided also, that it  
shall be lawfull for any person or persons who shall be in-  
dicted for any of the offences aforesaid, to produce at their  
respective Trials, any Witness or Witnesses, for the clearing  
of themselves from the said offences whereof they shall be  
so indicted, and the Iustices before whom such triall shall  
be had, shall have power, and are hereby authorized to ex-  
amine those Witnesses upon oath. So that both the fact and  
the time must bee cleere and certaine, both in the Indict-  
ment and evidence; and the reason is this, that the Priso-  
ner may (if hee hath any) produce his Witnesses, which  
that he cannot doe, if the time be not certain, it being the  
company the Prisoner is in at such a time that must either  
clear him, or lay him open to your Verdict: and therefore  
(Gentlemen) indictment and evidence must both agree in  
fact and time; if not, they are both invalids, and ought to  
be rejected, and no proceedings can or ought to be upon  
the same: and further, the Prisoner ought to have notice  
of both fact and time, before he be called to answer, that



so he may provide his Witnesses, since the Act requires them to be heard and sworn, and not so suddenly surprized by an Indictment, as Mr. *Webbe* I perceive was, who being committed for coyning, was unexpectedly arraigned for another thing, not having any time to provide for his defence, quite contrary to the Act which allows Witnesses to be heard and sworn, which cannot be without notice and time given.

And Gentlemen, the Law hath put you into a place of great trust, and in case the Court should have such prejudice against any Prisoner as thus to surprize him, and to lay him open to the mercy of death: It's your care to prevent it, and do the Prisoner right therein; and indeed so much the more, for that your Verdict is to be grounded on cleer and plain proofes, which cannot be where the Prisoner is call'd to a Triall for a fact which he dreams not of, especially in the case of Adultery, where the negative is as good as the affirmative.

Gentlemen, life and death is in your hands, the weale and woe of many a poor Family: your place is of great weight, the highest and greatest in the Court; the Court moves as you move; if you move amiss, the Court must move so also. The things that I have taken liberty to offer you are necessary; such Causes may come before you: the Court may have that prejudice against the Prisoner, as to throw them in many disadvantages, and may so much undervalue you (who indeed are the life of the Court) as will not allow you the Law to read and examine, as they did by Mr. *Webbes* Jury.

Therefore Gentlemen, as you are English men, and professe the Lord Christ, and are now call'd to so great an employment (wherein you have a very large opportunity of immitating our blessed Saviour, and following his golden Rule: Doe to all men as your selves would be done unto.) Rouze up your Spirits; claim your Right; let not might and greatnesse sway you, but in all things cleer and plaine evidences,

(15)

and a good conscience ; so will you purchase praise both  
of God and men , and be examples of great good to your  
Countrey-men : For which the Lord in his infinite mercy  
go along with you , according to the weight of your im-  
ployment.

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*FINIS.*

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